

VINCENT J. DeMARTINI, SB # 70621
BARRETT R.P. SCHAEFER, SB # 212133
DeMARTINI & WALKER LLP
175 North Redwood Drive, Suite 250
San Rafael, CA 94903
Telephone: (415) 472-7880
Facsimile: (415) 472-7950

Attorneys for Plaintiff
GEORGINE DIXON

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GEORGINE DIXON,
Plaintiff

vs.

BLANCA L. BARAHONA, DOES 1
through 10, Inclusive,
Defendants

Case No. CV 10 4037 BZ

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO REMAND
REMOVED ACTIONS**
[28 U.S.C. § 1447(c)]

Date: November 17, 2010
Time: 10:00 a.m.
U.S. Magistrate Judge Bernard Zimmerman
Court Room: G

TABLE OF CONTENTS

I. FACTUAL BACKGROUND	1
II. LEGAL ARGUMENT	9
A. <u>FEDERAL QUESTIONS MUST BE DISCLOSED UPON THE FACE OF THE COMPLAINT</u>	9
B. <u>IN THE ABSENCE OF FEDERAL SUBJECT MATTER JURISDICTION, CASE WILL BE REMANDED</u>	10
C. <u>STATE CLAIMS WITH NO FEDERAL NEXUS CAN NOT BE REMOVED TO FEDERAL JUDICIARY</u>	11
D. <u>THE BURDEN OF ESTABLISHING REMOVAL JURISDICTION IS ON THE PARTY SEEKING REMOVAL, NOT THE PARTY SEEKING REMAND TO STATE COURT</u>	14
E. <u>PURSUANT TO 28 U.S.C. § 1447 PLAINTIFF IS ENTITLED TO AN ORDER AWARDING HER COSTS AND ACTUAL EXPENSES, INCLUDING ATTORNEYS' FEES INCURRED BY REASON OF THE REMOVAL PROCEEDING</u>	15
III. CONCLUSION	16

TABLE OF AUTHORITIES

United States Constitution

Article One, Section 10 of the United States Constitution	5, 8
Fifth Amendment of the United States Constitution	5, 8
Ninth Amendment of the United States Constitution	7
Tenth Amendment of the United States Constitution	7
Twenty-First Amendment of the United States Constitution	7

United States Statutes

28 U.S.C. § 1447	11, 15
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United States Supreme Court Cases

Caterpillar Inc. v. Williams (1987) 482 U.S. 386	10, 11
Fair v. Kohler Die & Specialty Co. (1913) 228 U.S. 22	10
Gully v. First Nat'l Bank in Meridian (1936) 299 U.S. 109	10
Lindsey v. Normet, 405 U.S. 56	12
Merrell Dow Pharm. Inc. v. Thompson (1986) 478 U.S. 804	10
Pan American Petro. Corp. v. Superior Court (1961) 366 U.S. 656	10

Federal Cases

Albingia Versicherungs A.G. v. Schenker Int'l Inc. (9 th Cir. 2003) 344 F.3d 931	11
Albonetti v. GAF Corporation-Chemical Group (S. D. Tex 1981) 520 F.Supp. 825	15
Calif. Ex rel. Lockyer v. Dynegy, Inc. (9 th Cir. 2004) 375 F.3d 831	10
Columbia Gas Transmission Corp. v. Drain (4 th Cir. 2001) 237 F.3d 366	10
Duncan v. Stuetzle, (9 th Cir. 1996) 76 F.3d 1480	14
Ethridge v. Harbor House Restaurant (9 th Cir, 1988) 861 F.2d 1389	10, 14
Fellhauer v. Geneva (N.D. Ill. 1987) 673 F.Supp. 1445	15
Gorman v. Abbott Laboratories (D. R.I. 1986) 629 F.Supp. 1196	15
Harris v. Provident Life & Acc. Ins. Co. (9 th Cir. 1994) 26 F.3d 930	10
Lavadenz de Estenssoro v. American Jet, S.A., (D. Cal. 1996) 944 F.Supp. 813	14
Medical College of Wisconsin Faculty Physicians & Surgeons v. Pitsch (E. D. Wis. 1991) 776 F.Supp. 437	15

1	O'Halloran v. University of Wash., (9th Cir. 1988) 856 F.2d 1375	11, 14
2	Office of Hawai'ian Affairs v. Department of Educ. (D. Haw. 1997) 951 F.Supp. 1484 . . .	11, 14
3	Parks v. Montgomery Ward & Co. (10 th Cir. 1952) 951 F.Supp. 1484	11
4	Rains v. Criterion Systems, Inc. (9 th Cir. 1996) 80 F.3d 339	10
5	Richmond, Fredericksburg & Potomac R. Co. v. United States (4 th Cir. 1991) 945 F.2d 765	
6	14, 15
7	Samuel v. Langham (N.D. Tex.1992) 780 F.Supp. 424	15
8	Sanchez v. Monumental Life Ins. Co. (9 th Cir. 1996) 102 F.3d 398	14
9	Schwartz v. FHP International Corp., (D. Ariz. 1996) 947 F.Supp. 1354	14
10	Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc., (9 th Cir. 1998) 159 F.3d 1209	14
11	California Constitution	
12	Article VI, Section 1 of the California Constitution	8, 14
13	California Statutes	
14	Civil Code § 2924	4, 12, 13
15	Code of Civil Procedure § 1161	13
16	Code of Civil Procedure § 1161a	2, 11, 12
17	Code of Civil Procedure § 1162	12
18	Code of Civil Procedure § 1179a	8
19	Code of Civil Procedure § 392	11, 12
20	Code of Civil Procedure § 85	14
21	Code of Civil Procedure § 86	14
22	Corporations Code § 107	6
23	Penal Code § 648	6
24	California Cases	
25	American Nat. Bank v. Johnson, 124 Cal.App.Supp. 783	12, 13
26	Childs v. Eltinge, (1973) 29 Cal.App.3d 843	12
27	Jordan v. Talbot, 55 Cal.2d 597	12
28		

1 **TO DEFENDANT, BLANCA L. BARAHONA, IN PRO SE**

2 **PLEASE TAKE NOTICE** that plaintiff, GEORGINE DIXON, will, and hereby does,
 3 move this court at Court Room G, United States District Court House, 450 Golden Gate Avenue,
 4 San Francisco, California on November 17, 2010, at 10:00 a.m., or as soon thereafter as the
 5 matter may be heard, for an order remanding this case to the Superior Court of California for the
 6 County of Marin.

7 This motion is made on the ground that the cause was improperly removed and is not
 8 within the jurisdiction of this Court, in that: the matter in controversy does not exceed
 9 \$75,000.00, exclusive of interest and costs; this Court has no jurisdiction over the claim asserted
 10 in the Complaint; the Complaint herein does not present a claim or right arising under the
 11 Constitution, treaties, or laws of the United States; and the controversy is not wholly between
 12 citizens of different states, defendant, BLANCA L. BARAHONA, being a citizen of California,
 13 the same state as that of which plaintiff, GEORGINE DIXON, is a citizen, all of which more
 14 clearly appears in the declaration of plaintiff, GEORGINE DIXON, filed herewith and made a
 15 part hereof by reference. Plaintiff further moves this Court for an order that defendant,
 16 BLANCA L. BARAHONA, pay plaintiff, GEORGINE DIXON, for all of her costs and actual
 17 expenses, including attorney's fees, incurred by reason of the removal proceedings.

18 This motion will be based on this notice of motion, on the memorandum of points and
 19 authorities hereinbelow, on the Declaration of Georgine Dixon and the Request for Judicial
 20 Notice filed herewith and on the records and file herein.

21 **I. FACTUAL BACKGROUND**

22 On August 25, 2010, plaintiff, GEORGINE DIXON, filed two separate actions against
 23 defendant, BLANCA L. BARAHONA, for unlawful detainer in Marin County Superior Court.
 24 The first action entitled Dixon v. Barahona, Marin County Superior Court Case No. CIV
 25 1004511, involves defendant's unlawful detention of the premises located at 28 Warner Court,
 26 San Rafael, Marin County, California. (Attached to the Request for Judicial Notice filed
 27 herewith as Exhibit "A" is a true and correct copy of the Complaint filed in Marin County
 28 Superior Court Case No. CIV 1004511.) The second action entitled Dixon v. Barahona, Marin

County Superior Court Case No. CIV 1004512 involves defendant's unlawful detention of the premises located 26 Warner Court, San Rafael, Marin County, California. (Attached to the Request for Judicial Notice filed herewith as Exhibit "B" is a true and correct copy of the Complaint filed in Marin County Superior Court Case No. CIV 1004512.) The property which is at issue in both actions is a duplex with one parcel number but two separate street addresses (26 & 28 Warner Court, San Rafael, Marin County, California (hereinafter "the subject property")). (See Declaration of Georgine Dixon filed herewith, ¶ 2.) On August 28, 2010, defendant, BLANCA L. BARAHONA was personally served with copies of the Summons and Complaint for each of the two separate actions. Attached as Exhibits "C" and "D" to the Request for Judicial Notice filed herewith are true and correct copies of the Proofs of Service of the Summons and Complaint which were filed in the Marin County Superior Court in each of the above referenced actions.

Plaintiff is informed and believes that defendant, BLANCA L. BARAHONA, is in possession of the entirety of the property. Due to the fact that the property has two separate street addresses and the defendant is apparently in possession of the entirety of the property, it was necessary and proper for plaintiff to file two separate unlawful detainer actions, one for each separate street address, in order for plaintiff to obtain possession of each unit from defendant. (See Request for Judicial Notice, and Exhibits "A" and "B" thereto; see also Declaration of Georgine Dixon filed herewith, ¶ 3.)

Each of the Complaints filed by plaintiff, GEORGINE DIXON, in Marin County Superior Court contain only one cause of action for unlawful detainer after a foreclosure sale and service and expiration of a Three Day Notice to Quit pursuant to C.C.P. § 1161a(b)(3). Both of Plaintiff's Complaints allege that "[p]laintiff is the owner of the property located at 26-28 Warner Court, San Rafael, Marin County, California (hereinafter "the subject property"), by virtue of a purchase and sale for valuable consideration and Grant Deed delivered on November 23, 2009, from Robert Griggi and Karen Griggi (hereinafter "plaintiff's predecessor in interest"), husband and wife as grantors, and GEORGINE DIXON, a married woman as her sole and separate property, as grantee." (Plaintiff's Complaints (hereinafter "Complaints"), ¶ 4.)

1 The Complaints further allege that “[o]n November 24, 2009, plaintiff recorded said
2 Grant Deed to the subject property in the Office of the Marin County Recorder as Instrument No.
3 2009–0065706.” (Complaints, ¶ 5.) A copy of said Grant Deed is attached to each of the
4 Complaints as Exhibit “A” and made a part thereof by reference. The Complaints further allege
5 that “[p]laintiff’s grantors, Robert Griggi and Karen Griggi, obtained title to the subject property
6 as the bona fide purchasers for value by virtue of a trustee’s sale duly made on November 17,
7 2009, and a Trustee’s Deed executed and delivered to Robert and Karen Griggi, grantees, by
8 Power Default Services, Inc. f/k/a Ahmsi Default Services, Inc. by T.D. Service Company, Inc.,
9 as agent for Trustee, in a Deed of Trust executed and delivered by BLANCA L. BARAHONA,
10 as trustor, and recorded on August 26, 2005, in the office of the Marin County Recorder, State of
11 California, as Instrument No. 2005-0065235.” (Complaints, ¶ 6.)

12 The Complaints further allege that “[t]rustor, BLANCA BARAHONA, defaulted in the
13 payment of the note secured by said Deed of Trust and thereafter at the request of [the] owner
14 and holder of said note and Deed of Trust, said trustee caused to be recorded in the official
15 records of the Office of the County Recorder of Marin County, a Notice of Default and breach of
16 conditions of said Deed of Trust and its election to sell the subject property to satisfy the
17 obligations thereby secured. More than three months after recordation of said Notice of Default,
18 said trustee gave notice in the manner and form required that the subject property would be sold
19 at public auction to satisfy the obligations secured by said Deed of Trust. Said trustee gave
20 notice of the time and place of the sale of the subject property in accordance with the laws of the
21 State of California and the terms of said Deed of Trust.” (Complaints, ¶ 7.)

22 The Complaints additionally allege that “[o]n November 17, 2009, at the time and place
23 noticed for sale, said trustee sold the subject property to plaintiff’s predecessors in interest and
24 executed to plaintiff’s predecessors in interest a deed therefor which said deed was recorded on
25 November 24, 2009, in the official records in the Office of the County Recorder of Marin
26 County, California as Instrument No. 2009-0065075.” (Complaints, ¶ 8.) A copy of said
27 Trustee’s Deed is attached to each of the Complaints as Exhibit “B” and made a part thereof by
28 reference.

1 The Complaints additionally allege that “[s]aid Trustee’s Deed Upon Sale contains the
2 following paragraph ‘Whereas, Trustee complied with all applicable statutory provisions of
3 California Civil Code Sections 2924 et seq. [a]nd of the described Deed of Trust including the
4 mailing, publication, personal delivery, and posting of the Notice of Default and Notice of Sale,
5 as respectively appropriate.’ in compliance with Civil Code § 2924 which [recitation] is
6 conclusive evidence that all statutory compliance has been met as [a] prerequisite to said sale
7 pursuant to Civil Code § 2924.” (Complaints, ¶ 9.)

8 The Complaints further allege that “[o]n August 17, 2010, plaintiff caused to be served
9 on defendant, BLANCA BARAHONA, a written notice requiring defendant to quit and deliver
10 up possession of the subject premises to plaintiff within three days after service of said notice.”
11 (Complaints, ¶ 10.) A copy of said notices are attached to the respective Complaints as Exhibit
12 “C” and made a part thereof by reference.

13 The Complaints further allege that “[m]ore than three days have elapsed since the service
14 of said notice, and defendant has neglected and refused, and still neglects and refuses, to vacate
15 and deliver up possession of the subject premises to plaintiff. Plaintiff is entitled to immediate
16 possession of the premises.” (Complaints, ¶ 11.) Finally, the Complaints allege that “[p]laintiff
17 is informed and believes that defendant continues in possession of the subject property and said
18 possession [is] without plaintiff’s permission or consent.” (Complaints, ¶ 12.)

19 In her Notice of Removal, defendant, BLANCA L. BARAHONA, argues that she is
20 entitled to removal of these two separate state court actions on the grounds that defendant
21 contends that her due process rights have allegedly been circumvented as she contends that in
22 one of the two separate unlawful detainer actions (Case No. CIV 1004511) that a default
23 judgment was entered against her even though she was allegedly never served with the Summons
24 and Complaint in that action, and there was no evidence of service upon her of entry of default or
25 the default judgment and that the filing of two separate actions for unlawful detainer covering
26 the same property is inappropriate and a tactic designed to defeat defendant’s right to due
27 process. (Notice of Removal, page 2, ¶ 4.) In fact, defendant was personally served with the
28 Summons and Complaint in each of the two separate actions. (See Request for Judicial Notice,

1 and Exhibits “C” and “D” thereto.) Additionally, a copy of the Request for Entry of Default
2 filed in Marin County Superior Court, Case No. CIV 1004511 was mailed to defendant on the
3 same date that the Request for Entry of Default was filed with the Court. Attached to the
4 Request for Judicial Notice filed herewith as Exhibit “E” is a true and correct copy of the
5 Request for Entry of Default. Page 2 of said Exhibit “E” contains a proof of service which
6 establishes that the Request for Entry of Default was served on defendant, BLANCA L.
7 BARAHONA, by mail on September 3, 2010. Moreover, defendant’s contention that the default
8 judgment is nonexistent is also without merit. Attached to the Request for Judicial Notice as
9 Exhibit “F” is a true and correct copy of the file stamped Judgment entered in Marin County
10 Superior Court, Case No. CIV 1004511.

11 Defendant’s Notice of Removal further contends that the Notice of Removal is
12 appropriate on the grounds that both of the actions previously pending in state court involve a
13 federal question in that: 1) defendant has been denied due process guaranteed under the Fifth
14 Amendment; 2) defendant’s civil rights have been violated in some unspecified fashion; 3) the
15 Clerk of the Marin County Superior Court, the Marin County Sheriff’s office and opposing
16 counsel, Vincent DeMartini, have all allegedly engaged in mail fraud through some unspecified
17 acts (presumably defendant’s allegations with respect to failure to serve defendant with a copy of
18 the Request for Default in Case No. CIV 1004511, and issuance of the Writ based upon the entry
19 of the Default Judgment and service of the Writ and Notice to Vacate by the Marin County
20 Sheriff’s office). (Notice of Removal, page 2, line 26, through page 3, line 2.)

21 Defendant’s Notice of Removal further contends that these actions are entitled to removal
22 under the federal question of Article One, Section 10 (of the United States Constitution) as it
23 pertains to “the subject of tender of obligations in payment of debt.” (Notice of Removal, page
24 3, lines 3 through 5.) Defendant does not provide any supporting factual or legal argument as to
25 how the cases at hand or the facts or circumstances in the underlying state court actions relate in
26 any fashion to the authority cited. Article One, Section 10 of the United States Constitution
27 provides that: “No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of
28 Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin

1 a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing
 2 the Obligation of Contracts, or grant any Title of Nobility.” Based upon the facts alleged in
 3 defendant’s Notice of Removal and Declaration in support thereof, it is unclear how this
 4 authority relates in any fashion to the allegations of the Complaints herein or in what manner the
 5 cited authority raises a federal questions to bring this matter into the jurisdiction of this Court.

6 Defendant’s Notice of Removal further contends that these actions are entitled to removal
 7 under the federal question of the above cited authority “as it pertains to the subject of payment of
 8 filing fees to invoke the subject matter jurisdiction of the court in conjunction with other
 9 supporting law, such as California Corporation[s] Code section 107 which mandates: 107. No
 10 corporation, association or individual shall issue or put in circulation, as money, anything but
 11 lawful money of the United States.” and Penal Code section 648 which mandates: 648. Every
 12 person who makes, issues or puts in circulation any bill, check, ticket, certificate, promissory
 13 note, or the paper of any bank, to circulate as money, except as authorized by the laws of the
 14 United States, for the first offense, is guilty of a misdemeanor, and for each and every
 15 subsequent offense, is guilty of felony.” Defendant’s argument with respect to these federal
 16 questions which are allegedly related to the instant action and allegedly provide grounds for
 17 removal are yet again not supported by any factual or legal argument and are clearly nonsensical.
 18 Moreover, it is important for the Court to note that the issue of whether a federal question has
 19 been raised in the action is framed by the allegations of the Complaint and not by defendant’s
 20 arguments or issues that she might raise as affirmative defenses to the action.

21 Defendant’s Notice of Removal further contends that “[t]his action wholly involves
 22 violations of the supremacy clause of the federal constitution by state laws, rules and state actors
 23 which raises a federal question.” (Notice of Removal, page 3, lines 27 through 28.) Defendant’s
 24 contentions in this regard are based upon her contentions that Plaintiff’s claim is allegedly based
 25 upon false and fraudulent documents beginning with the Deed of Trust and the Substitution of
 26 Trustee. (Notice of Removal, page 4, lines 2 through 3.) Defendant’s Notice of Removal further
 27 contends that because the Substitution of Trustee is executed by Eric Tate a resident of
 28 Minnesota, on behalf of AHMSI, a Texas Corporation, and defendant, Blanca Barahona is a

1 resident of California, that diversity of jurisdiction exists. Defendant's Notice of Removal
2 however ignores the salient fact that neither the Trustee nor AMHSI is a party to this proceeding.
3 This action was brought by GEORGINE DIXON, the subsequent purchaser of the property for
4 value after a Trustee's Sale, and GEORGINE DIXON is, and at all time referenced in the
5 Complaints at issue, has been a resident of the State of California. (Declaration of Georgine
6 Dixon, ¶¶ 4 and 5.) Accordingly, no diversity of citizenship exists to bring this action within the
7 jurisdiction of the Federal Courts.

8 Defendant's Notice of Removal next contends that the Superior Court of California,
9 County of Marin is a foreign corpra ficta operating contrary to the Ninth, Tenth and Twenty-First
10 Amendments of the Constitution which defendant alleges raises a further federal question. This
11 contention is without merit as well. First, defendant cannot establish that even if this statement
12 were true, that the Superior Court of California, County of Marin is a party to this proceeding.
13 Even if the Superior Court of California, County of Marin was a foreign corpra ficta operating in
14 violation of the Constitution, since it is not a party to this proceeding, no federal question is
15 raised in the instant litigation. Moreover, the documentation attached to Defendant's Notice of
16 Removal does not support defendant's contention that the Superior Court of California, County
17 of Marin is a foreign corpra ficta.. It establishes that the Superior Court of California, County of
18 Marin is a California Public Agency registered to do business in the State of California. Finally,
19 although the issue is irrelevant as the Superior Court of California, County of Marin is not a
20 party to this action, defendant has provided no factual or legal basis to establish that the Superior
21 Court of California, County of Marin is operating in any fashion in violation of the United States
22 Constitution.

23 Defendant's Notice of Removal additionally argues that the amount in controversy in
24 each of these actions is yet to be determined and therefore jurisdiction of this Court is
25 appropriate. (Notice of Removal, page 4, lines 22 through 23.) However, this argument is also
26 without merit. Plaintiff's Complaint herein merely seeks per diem damages in the sum of \$49.32
27 form and after August 21, 2010, for each day defendant continues in possession of the subject
28 premises. At that per diem rate, defendant would have to unlawfully hold possession of the

premises for in excess of 1,520 days (in excess of 4 years), before this matter would reach the jurisdictional minimum of this Court of \$75,000.00. Since this matter is a summary proceeding and entitled to preference under California Code of Civil Procedure § 1179a, it is anticipated and expected that this matter will be disposed of long before the damages in this action have approached the minimum jurisdictional limitations of this Court.

Defendant's Notice of Removal further argues that this Court has original jurisdiction over this matter under the supremacy clause:

"because a declaratory judgment is essential to determine:

1) Does the Superior Court of California, County of Marin, a public agency while doing business in California state have sovereign capacity to circumvent the supremacy clause of the United States Constitution as it pertains to the subject of tender of obligations in payment of debts?

2) Further, can said public agency operating by federal thrust under FEIN 68-0460174, exercise the judicial power contained in Article VI Section 1 of the California Constitution that is strictly vested in tribunals that exercise jurisdiction of a strictly judicial character?

3) Further, can a foreclosure/unlawful detainer action under state law proceed without tender filing fees in an medium of exchange that comports with Article 1 Section 10 supra?

4) Can plaintiff file two separate causes of action based upon the exact same subject matter and name the exact same litigants while raising the same exact issue of controversy without proper service of process being perfected upon the defendant for the second cause of action in spite of the principles of due process contained in the Fifth Amendment?" (Notice of Removal, page 4, line 24, through page 5, line 10.)

Defendant's argument in this regard is yet again not supported by any factual or legal argument and is clearly nonsensical. Moreover, it is important for the Court to note that the issue of whether a federal question has been raised in the action is framed by the allegations of the Complaint and not by defendant's arguments or issues that she might raise as affirmative defenses to the action. Clearly, the allegations of the two separate Complaints which defendant seeks to remove to this Court's jurisdiction do not raise any federal questions. The Complaints merely raise matters which are the subject of California statutes and accordingly, the matters should be remanded back to the jurisdiction of the Marin County Superior Court.

Finally, Defendant's Notice of Removal contends that "[b]y the filing of this pleading the jurisdiction of the Public Agency including its judgment, writ and sheriff's notice to vacate are

1 stayed pending a hearing on this matter. Defendant provides no authority to support this
 2 position. In fact, as will be set forth in more detail hereinbelow, authority contrary to this
 3 position exists to support the argument that unless, and until, this Court issues an order staying
 4 the action, the federal rules neither add to nor abrogate what has been done in the state court
 5 prior to removal. The federal court takes the case as it finds it on removal and treats everything
 6 that occurred in the state court as if it had taken place in federal court. Thus, a default judgment
 7 entered in the state court is not set aside as a matter of law on removal to the district court.
 8 Instead, it must be regarded as valid unless and until the district court sets it aside.

9 In the instant action, as noted above, defendant was personally served with the Summons
 10 and Complaint in both of the actions at issue herein. (Request for Judicial Notice, and Exhibits
 11 “C” and “D” thereto.) In response to Marin County Superior Court Case No. CIV 1004511,
 12 defendant failed to timely file or serve any responsive pleading. Since the time for defendant to
 13 file a responsive pleading therein has expired, defendant’s Default Judgment was appropriately
 14 taken and a Writ of Possession was issued thereon. Unless this action is stayed by an order of
 15 this Court, plaintiff may appropriately instruct the Marin County Sheriff to execute upon the
 16 Writ issued therein and possession of the premises located at 28 Warner Court, San Rafael, Main
 17 County, may be restored to plaintiff.

18 Based upon the foregoing facts, it is clear that there is no basis for jurisdiction of this
 19 action in the United States District Court. There are no federal questions raised in the
 20 Complaints at issue in these proceedings. There is no diversity of citizenship between the named
 21 plaintiff and defendant herein. Finally, the amount in controversy is considerably below the
 22 minimum jurisdiction of this Court. Accordingly, the Court should order that both actions be
 23 remanded back to the Marin County Superior Court.

24 **II. LEGAL ARGUMENT**

25 A. FEDERAL QUESTIONS MUST BE DISCLOSED UPON THE FACE OF THE 26 COMPLAINT

27 In her Notice of Removal, defendant herein, BLANCA L. BARAHONA, contends that
 28 this matter allegedly raises several federal questions. However, it is clear from the allegations of

the Complaints at issue in these actions that no federal questions are raised in the pleadings. The Complaints at issue both involve only California state claims relating to defendant's unlawful detention of the subject real property. When federal jurisdiction arises as a result of a "federal question," the question "must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." Gully v. First Nat'l Bank in Meridian (1936) 299 U.S. 109, 112-13, 81 L.Ed. 70, 57 S.Ct. 96 (noting that the federal question cannot be "merely a possible or conjectural one"). Thus the rule enables the plaintiff, as "master of the complaint," to "choose to have the cause heard in state court" by eschewing claims based on federal law. Calif. Ex rel. Lockyer v. Dynegy, Inc. (9th Cir. 2004) 375 F.3d 831, 839. The well-pleaded complaint rule requires that federal question jurisdiction not exist unless a federal question appears on the face of plaintiff's properly pleaded complaint." Columbia Gas Transmission Corp. v. Drain (4th Cir. 2001) 237 F.3d 366, 369-79, citing Merrell Dow Pharm. Inc. v. Thompson (1986) 478 U.S. 804, 808, 92 L.Ed.2d 650, 106 S.Ct. 3229. The Complaints at issue in this matter asserts no federal claims.

In Rains v. Criterion Systems, Inc. (9th Cir. 1996) 80 F.3d 339, 344, the Ninth Circuit wrote

Rains chose to bring a state claim rather than a Title VII claim, and was entitled to do so.

See Pan American Petro. Corp. v. Superior Court (1961) 366 U.S. 656, 662-63, 81 S.Ct. 1303, 1307-08, 6 L.Ed.2d 584 (stating that "the party who brings a suit is master to decide what law he will rely upon") (quoting Fair v. Kohler Die & Specialty Co. (1913) 228 U.S. 22, 25, 33 S.Ct. 410, 411-12, 57 L.Ed., 716). A plaintiff "may avoid federal jurisdiction by exclusive reliance on state law." Caterpillar Inc. v. Williams (1987) 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318; *see also* Ethridge v. Harbor House Restaurant (9th Cir. 1988) 861 F.2d 1389, 1395 ("If the plaintiff may sue on either state or federal grounds, the plaintiff may avoid removal simply by relying exclusively on the state law claim").

The Ninth Circuit held in Harris v. Provident Life & Acc. Ins. Co. (9th Cir. 1994) 26 F.3d 930, 933-34:

Ordinarily, "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Caterpillar Inc. v. Williams (1987) 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318; accord Ethridge v. Harbor House Restaurant (9th Cir. 1988) 861 F.2d 1389, 1393.

//

B. IN THE ABSENCE OF FEDERAL SUBJECT MATTER JURISDICTION, CASE WILL BE REMANDED

The right to secure a remand of the action to state court when there is no federal subject matter jurisdiction basis for removing the action to a federal court cannot be waived by either party. Albingia Versicherungs A.G. v. Schenker Int'l Inc. (9th Cir. 2003) 344 F.3d 931, *as amended in other respects* 350 F.3d 916, *cert. denied* 124 S.Ct. 2162, 541 U.S. 1041, 158 L.Ed.2d 730 (2004). Further, parties may not confer jurisdiction over the subject matter of an action on a federal court by consent. Parks v. Montgomery Ward & Co. (10th Cir. 1952) Office of Hawai'ian Affairs v. Department of Education (D. Hawaii 1996) 951 F.Supp. 1484.

C. STATE CLAIMS WITH NO FEDERAL NEXUS CAN NOT BE REMOVED TO FEDERAL JUDICIARY

The two Complaints at issue in these proceedings (Marin County Superior Court, Case Nos. CIV 1004511 and 1004512) do not involve any federal questions whatsoever. Both Complaints contain only one cause of action, for unlawful detainer after a foreclosure sale and service upon defendant and expiration thereof of a Three Day Notice to Quit pursuant to the authority set forth in California Code of Civil Procedure § 1161a for two separate and distinct property addresses, 28 Warner Court and 26 Warner Court, San Rafael, Marin County, California, respectively. Despite defendant's arguments to the contrary in her Notice of Removal, these actions invoke no federal question; there is no diversity of citizenship between plaintiff and defendant in these actions; and the amount in controversy in each action does not exceed the minimum jurisdictional limits of this Court. If it appears, at any time before the final judgment, that the district court lacks subject matter jurisdiction, the case will be remanded back to state court. (28 U.S.C. § 1447(c).)

Generally, a party may file an action in federal court if there is diversity of citizenship among the parties, or if the action raises a substantial federal question. (See e.g. Caterpillar Inc. v. Williams, (1987) 482 U.S. 386, 392.) The party seeking removal bears the burden of establishing federal jurisdiction. (O'Halloran v. University of Wash., (9th Cir. 1988) 856 F.2d 1375, 1380.)

Both of the actions in question herein involve plaintiff's claim that defendant is unlawfully holding over in the premises which is the subject of each respective action. California Code of Civil Procedure § 392 provides in pertinent part, that "(a) Subject to the power of the court to transfer actions and proceedings as provided in this title, the superior court in the county where the real property that is the subject of the action, or some part thereof, is situated, is the proper court for the trial of the following actions: (1) For the recovery of real property, or of an estate or interest therein, or for the determination in any form, of that right or interest, and for injuries to real property."

The unlawful detainer statutes were enacted to provide an adequate, expeditious and summary procedure for regaining possession of real property wrongfully withheld by a tenant or former owner-occupant after a foreclosure sale. The rights and remedies afforded a landlord by the statutory provisions are given in lieu of his common law rights and remedies which included the right to enter and expel the tenant by force. (See e.g. Lindsey v. Normet, 405 U.S. 56, 71 [31 L.Ed.2d 36, 49, 92 S.Ct. 862]; cf. Jordan v. Talbot, 55 Cal.2d 597, 604 [12 Cal.Rptr. 488, 361 P.2d 20, 6 A.L.R.3d 161].) The enactment of such statutory procedures is supported by the strong public policy of preserving the peace (see Jordan v. Talbot, supra, 55 Cal.2d at pp. 603 [fn. 2], 607) as well as the recognition of the unique factual and legal characteristics of the landlord-tenant relationship. (Lindsey v. Normet, supra, 405 U.S. at pp. 72-73 [31 L.Ed.2d at p. 50]). n10). (Childs v. Eltinge, (1973) 29 Cal.App.3d 843, 853.) Based upon the foregoing authorities, the Superior Court in the County in which the subject property is located has exclusive jurisdiction over unlawful detainer actions. Accordingly, jurisdiction of the actions at issue in these proceedings is the Marin County Superior Court.

Moreover, based upon the allegations of the Complaints at issue herein, it is clear that the Complaints only raise California State claims under Code of Civil Procedure § 1161a and do not in any fashion raise federal questions. Code of Civil Procedure § 1161a provides in pertinent part "A person who holds over and continues in possession of real property, after a three-day written notice to quit the same, shall have been served upon him ... as prescribed in Section 1162 of the Code of Civil Procedure, may be removed therefrom as prescribed in this chapter. . . . 3.

1 Where the property has been duly sold in accordance with Section 2924 of the Civil Code, under
2 a power of sale contained in a deed of trust executed by him, or a person under whom he claims,
3 and the title under the sale has been duly perfected. . . .” As the Court held in American Nat.
4 Bank v. Johnson, 124 Cal.App.Supp. 783 [11 P.2d 916] the superior court has jurisdiction over
5 actions authorized by the foregoing section (now C.C.P. § 1161 et seq.).

6 In the present actions plaintiff alleges that she is the owner and entitled to possession of
7 the real property described in the Complaint; that she is the successor in interest of Robert and
8 Karen Griggi; that the latter purchased the property at a trustee’s sale held pursuant to a power of
9 sale contained in a trust deed executed by BLANCA L. BARAHONA as trustor; and that title to
10 the property has been perfected by the execution and delivery of a trustee’s deed which was filed
11 for record in the recorder’s office and recorded on November 24, 2009; and that plaintiff’s title
12 to the property was perfected by virtue of Grant Deed delivered from Robert and Karen Griggi to
13 GEORGINE DIXON which was recorded in the Office of the Marin County Recorder on
14 November 24, 2009 as Instrument No. 2009-0065706. The Complaints further allege that the
15 Deed of Trust under which the foreclosure sale was conducted was dated August 26, 2005, and
16 executed by BLANCA A. BARAHONA as trustor. It was further alleged that the statutory three
17 day notice to quit had been given and has expired, that defendant has failed to comply with the
18 requirements of the Three Day Notice, that the rental value of the property was \$49.32 per day;
19 that on account of defendant’s holding over and continuing in possession plaintiff had suffered
20 damages in that sum, and will continue to suffer said daily damages until possession of the
21 subject property is restored to plaintiff. The relief asked for was the restitution of the premises
22 and \$49.32 a day for defendant’s unlawful detention of the premises.

23 Defendant’s Notice of Removal alleges that plaintiff’s claims are based upon false and
24 fraudulent documents beginning with the Deed of Trust (which document was executed by
25 defendant in the presence of a Notary Public) and a subsequent Substitution of Trustees.
26 Defendant does not deny that she was in default under the Deed of Trust or that there was sale of
27 the property in accordance with section 2924 of the Civil Code; but she alleges that the deed of
28 trust pursuant to which the sale was made was in some unspecified fashion was false or

1 fraudulent. Her Notice of Removal then goes on to allege the Substitution of Trustees was
 2 executed by an individual (Eric Tate) who is allegedly “notorious for executing counterfeit
 3 assignment of mortgage documents.”.

4 The propriety of removal is determined solely on the basis of the pleadings filed in state
 5 court. (See e.g. Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., (9th Cir. 1998) 159
 6 F.3d 1209, 1213; O’Halloran v. Univ. of Wash., (9th Cir. 1988) 856 F.2d 1375, 1379.)
 7 Regardless of defendant’s nonsensical and unmeritorious arguments to the contrary, the
 8 pleadings in this action clearly allege only claims that arise under California statutes. The
 9 Complaints allege only one cause of action for unlawful detainer pursuant to California state
 10 statutes and does not allege a federal question and accordingly this Court does not have
 11 jurisdiction over this action. An unlawful detainer (or forcible entry or forcible detainer)
 12 proceeding for which the whole amount of damages claimed is \$25,000 or less, is a limited civil
 13 case. (Code of Civil Procedure § 86(a)(4).) Limited civil cases are within the jurisdiction of the
 14 superior court. (California Constitution, art. VI, § 10; see Code of Civil Procedure §§ 85, 86.)
 15 Moreover, plaintiff’s Complaints seek possession of the respective premises and per diem
 16 damages of \$49.32 which is not within the minimum jurisdiction of this Court. Finally, it is
 17 clear there is no diversity of citizenship in this action as all parties named herein are citizens of
 18 the State of California and accordingly, this Court lacks jurisdiction on the basis of diversity of
 19 citizenship as well. (Declaration of Georgine Dixon, ¶ 4.)

20 D. THE BURDEN OF ESTABLISHING REMOVAL JURISDICTION IS ON THE
 21 PARTY SEEKING REMOVAL, NOT THE PARTY SEEKING REMAND TO
STATE COURT

22 It is also well-settled under the case law that the burden is on the party seeking to
 23 preserve the district court’s removal jurisdiction (here defendant, BLANCA L. BARAHONA),
 24 not the party moving for remand to state court (here plaintiff, GEORGINE DIXON), to show
 25 that the requirements for removal have been met.¹ Richmond, Fredericksburg & Potomac R. Co.

26
 27
 28 ¹ See, e.g., Sanchez v. Monumental Life Ins. Co. (9th Cir. 1996) 102 F.3d 398; Duncan v. Stuetzle, (9th Cir.
 1996) 76 F.3d 1480; Office of Hawai’ian Affairs v. Department of Educ. (D. Haw. 1997) 951 F.Supp. 1484;
Schwartz v. FHP International Corp., (D. Ariz. 1996) 947 F.Supp. 1354; Lavadenz de Estenssoro v. American Jet,
S.A., (D. Cal. 1996) 944 F.Supp. 813.

1 v. United States (4th Cir. 1991) 945 F.2d 765, 768. The removal statute is strictly construed
 2 against removal and the burden of establishing federal jurisdiction falls to the party invoking the
 3 statute. Ethridge v. Harbor House Rest. (9th Cir. 1988) 861 F.2d 1389, 1393.

4 When there is doubt as to the right to removal in the first instance, ambiguities are to be
 5 construed against removal. Samuel v. Langham (N.D. Tex.1992) 780 F.Supp. 424, 427; *see also*
 6 Fellhauer v. Geneva (N.D. Ill. 1987) 673 F.Supp. 1445, 1447. “The district court, in a
 7 challenged case, may retain jurisdiction only where its authority to do so is clear.” Gorman v.
 8 Abbott Laboratories (D. R.I. 1986) 629 F.Supp. 1196, 1203. “The removing party bears the
 9 burden of showing that removal was proper.” Medical College of Wisconsin Faculty Physicians
 10 & Surgeons v. Pitsch (E. D. Wis. 1991) 776 F.Supp. 437, 439. “This extends not only to
 11 demonstrating a jurisdictional basis for removal, but also necessary compliance with the
 12 requirements of the removal statute.” Albonetti v. GAF Corporation-Chemical Group (S. D. Tex
 13 1981) 520 F.Supp. 825, 827.

14 Here, the defendant has failed to meet her burden in that defendant has failed to establish
 15 any ground for federal jurisdiction over the California State law claims plead in plaintiff’s
 16 Complaints. Additionally, defendant has failed to establish diversity of citizenship between the
 17 named parties to these actions. Finally, defendant has not, and cannot, establish that the amount
 18 in controversy exceeds the jurisdictional minimum of the federal court. Based upon defendant’s
 19 failure to meet her burden, the Court should grant the Motion for Remand and remand these
 20 proceedings back to the jurisdiction of the Superior Court of California, County of Marin.

21 E. PURSUANT TO 28 U.S.C. § 1447 PLAINTIFF IS ENTITLED TO AN ORDER
 22 AWARDING HER COSTS AND ACTUAL EXPENSES, INCLUDING
 23 ATTORNEYS’ FEES INCURRED BY REASON OF THE REMOVAL
PROCEEDINGS

24 28 U.S.C. § 1447(c) provides in pertinent part that “An order remanding the case may
 25 require payment of just costs and any actual expenses, including attorney fees, incurred as a
 26 result of the removal.” In the instant action, plaintiff has clearly demonstrated by this Motion
 27 that the removal of this matter to the jurisdiction of this court by defendant herein, BLANCA L.
 28 BARAHONA, was inappropriate. Defendant clearly filed the Notice of Removal for the sole

1 purposes of delaying these proceedings (which is established on the face of defendant's Notice
 2 of Removal by defendant's statement on page 5, lines 17 through 18, wherein defendant
 3 contends that the instant Notice of Removal stays proceedings on the judgment, writ and
 4 sheriff's notice in Case No. CIV 1004511 pending a hearing on this matter) without any facts or
 5 relevant authorities to support her position that removal is appropriate and that this Court has
 6 jurisdiction over this matter.

7 Plaintiff has incurred actual expenses and costs, including attorneys' fees in the sum of
 8 \$1,200.00, in preparing the instant Motion for Remand and anticipates incurring an additionally
 9 two and half hours of attorneys' fees at \$375.00 per hour in preparing for, traveling to and
 10 appearing at the hearing on this Motion. (Declaration of Georgine Dixon, ¶ 5.) Based upon the
 11 foregoing, plaintiff respectfully requests that this Court issue an order in connection with the
 12 remand of these actions back to the Superior Court of California, County of Marin that plaintiff
 13 is entitled to an award of costs and expenses incurred in connection with the removal of this
 14 action, including attorneys' fees in the sum of \$2,137.50 pursuant to the authority set forth in 28
 15 U.S.C. § 1447(c).

16 III. CONCLUSION

17 Based upon the foregoing facts and authorities, it is clear that there is no basis for
 18 jurisdiction of this action in the United States District Court. There are no federal questions
 19 raised in the Complaints at issue in these proceedings. There is no diversity of citizenship
 20 between the named plaintiff and defendant herein. Finally, the amount in controversy is
 21 considerably below the minimum jurisdiction of this Court. Accordingly, the Court should order
 22 that both actions be remanded to the Marin County Superior Court and should award plaintiff the
 23 sum of \$2,137.50, as and for the plaintiff's actual costs and expenses, including attorneys' fees
 24 incurred in connection with the removal proceedings.

25 Dated: October 1, 2010

DeMARTINI & WALKER LLP

26
 27
 28 /s/
 Vincent J. DeMartini, Attorney for Plaintiff

PROOF OF SERVICE

I, the undersigned, declare that:

I am over the age of eighteen years, employed in the County of Marin, and not a party to this action; my business address is 175 North Redwood Drive, Suite 250, San Rafael, CA 94903.

On the date noted hereunder, I served the enclosed:

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO REMAND REMOVED ACTIONS

on the following party(ies):

Blanca L. Barahona
26 Warner Court
San Rafael, CA 94901
Defendant in Pro Per

(X) BY MAIL - I am readily familiar with DeMartini & Walker LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Rafael, California, in the ordinary course of business.

() BY FACSIMILE - I caused such documents to be transmitted to the telephone number of the addressee listed above, by use of facsimile telephone number (415) 472-7950. The facsimile machine used complied with *California Rules of Court*, Rule 2004 and no error was reported by the machine. Pursuant to *California Rules of Court*, Rule 2006(d) a transmission record of the transmission was printed.

() BY PERSONAL SERVICE as follows: I caused a copy of such documents to be delivered by hand to the addressee between the hours of 8:00 a.m. and 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 1, 2010, at San Rafael, CA.

/s/
Donna J. Lewis